



Setti D. Warren  
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Candace Havens  
Director

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**MEMORANDUM**

Public Hearing Date: June 14, 2011  
Land Use Action Date: June 21, 2011  
Board of Aldermen Action Date: August 8, 2011  
90-Day Expiration Date: August 23, 2011

DATE: June 10, 2011

TO: Board of Aldermen

FROM: Candace Havens, Director of Planning and Development  
Eve Tapper, Chief Planner for Current Planning<sup>ET</sup>  
Derek Valentine, Senior Land Use Planner

SUBJECT: Petition 215-08(2), MAX MAZAEV/VICTOR A. NICOLAZZO, JR., TRUSTEE, petition to amend Special Permit #215-08, granted on 9/2/08, to waive 16 on-site parking spaces for a non-profit adult daycare at 149A CALIFORNIA STREET, Ward 1, NONANTUM, which now seeks to increase the number of clients and staff, requiring a waiver of six additional required parking spaces on land known as SBL 11, 1, 1A, containing ~71,755 sq. ft. of land in a district zoned Manufacturing. Ref: Sec 30-24, 30-23, 30-19(d), and 30-19(m) of the City of Newton Rev Zoning Ord, 2007.

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The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will want to consider in its discussion at a subsequent Working Session.

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### **EXECUTIVE SUMMARY**

The subject property consists of 71,755 square feet of land in a Manufacturing zone. The site consists of a series of concrete block buildings, one of which is being used by Zdorovie Senior Services, a non-profit adult day care center. The center provides services for the elderly, many of whom are Russian immigrants. The facility was allowed to locate in the Manufacturing zone under the so-called Dover Amendment, which grants relief from some zoning controls to non-profit educational uses. However, the City can impose reasonable regulations on Dover-protected institutions, most notably parking requirements.

The adult day care use was approved through the Administrative Site Plan Review process in 2005, as is the City's long-standing practice for Dover-protected uses. At that time, the approval was for 42 clients and eight staff members. The Commissioner of Inspectional Services waived certain dimensional standards for the parking facilities, and permitted the operation with only 12 on-site parking spaces. In 2008, the facility was expanded through the special permit process to accommodate 72 clients and 12 employees. This expansion of the use would have required 16 additional parking spaces, but no additional spaces were provided at the time of expansion. A special permit was granted through Board Order #215-08 to waive 16 parking spaces.

Under this latest proposal, the applicant would like to expand the adult day care to accommodate a total 87 clients (an increase of 15) and 15 staff members (an increase of 3). No new parking is being proposed, and as a result, a special permit is required to waive an additional six spaces, which will be added to the waiver that has already been granted through the prior board order.

The petitioner's clients do not have cars or licenses, and therefore, the standard parking requirements overstate the actual parking demand for the facility. All clients are transported to the site via minibus or van and have very little impact on the larger site and neighborhood. Vans are used to transport clients from the site to local shops, or the YMCA. A majority of employees do not drive to the facility. Out of the twelve employees providing services to clients, five of them drive the minibus/vans and arrive at the site in these vehicles, four employees are dropped off at the site by family members, one person walks to the site. Only two or three employees arrive via single-occupant vehicles. The petitioner states, from experience, that at least three of the twelve spaces currently provided are routinely vacant. The site is near MBTA bus routes and the petitioner is willing to provide incentives to new employees to encourage them to use public transportation to get to the site.

Zdorovie Services is a low-impact use, which provides a service upon which seniors in the area have come to rely upon. The parking requirements in the Newton Zoning Ordinance assume that clients and employees arrive at the site via personal automobiles. The requirements are excessive for a facility that relies heavily on other modes of transportation in order to reach the site. The Planning Department supports a parking waiver for the proposed use.

I. SIGNIFICANT ISSUES FOR CONSIDERATION:

1. When reviewing this petition, the Board should determine whether literal compliance with parking requirements is impracticable due to the nature of the use for the following reasons:
  - a) The proposed waiver of six on-site parking spaces is appropriate because few, if any, of the clients drive to the center.
  - b) A majority of the petitioner's employees do not drive single-occupant vehicles to the site.
  - c) The site is located in close proximity to MBTA bus service and the petitioner is willing to provide incentives to encourage current employees and new hires to use public transportation.
  - d) The petitioner continues to operate a non-profit service to members of the community, while having no negative impact on the neighborhood.
  - e) The busing of clients to and from the site is in keeping with the objectives of the *Newton Comprehensive Plan's* goal of reducing dependence on single-occupant vehicles.

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The site is located in Nonantum, just west of the Watertown Town Line. The site is in the center of a large Manufacturing zone, but does have some Multi-Residence 2 zones to the west of the site along California Street. The Charles River runs just north of the petitioner's site. There is a diverse mixture of uses in the neighborhood. Industrial and commercial uses are prevalent along California Street, interspersed with multi-family residential. The various buildings on site host a variety of uses; there is an HVAC contractor, a yoga studio, an automotive supply company, a dance studio and the subject use.

B. Site

The site is 71,755 square feet and has substantial frontage on the Charles River. It is improved with five concrete block buildings and is mostly covered with bituminous concrete. The petitioner's building is located near the front property line, on an interior lot and is surrounded by 12 diagonal and perpendicular parking spaces. These parking spaces are not compliant with dimensional requirements in the Newton Zoning Ordinance, but these standards were waived as part of the original Administrative Site Plan Review. No change is proposed to

this existing condition. In accordance with the 2005 Administrative Site Plan Review, one of the 12 spaces was designated for handicap use.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The adult day care use will not change as a result of this petition, but will be expanded to accommodate additional employees and clients. Although this is not an allowed use in the Manufacturing zone, it was authorized under the Dover Amendment as a result of its non-profit status.

B. Building and Site Design

There are no changes proposed to the exterior of the building or to the site. A condition was included in Board Order #215-08, requiring the petitioner to maintain signage and markings to facilitate smooth traffic flow. The directional markings have been implemented per this condition. The Planning Department recommends that a condition be added requiring the petitioner to maintain these directional markings for the life of the use.

C. Parking and Circulation

The Zoning Review Memorandum ("ATTACHMENT C"), provides an analysis with respect to parking requirements. The parking facility currently provides parking for twelve vehicles. The proposal is for a total of 87 students (an increase of 15), and 15 employees (an increase of three), to meet state laws. In accordance with parking requirements for a non-profit educational institution, one parking stall is required for each three students. To comply with this requirement, a facility with 87 students would require 29 parking stalls. Per these same requirements, one stall is required per three employees. A total of 15 employees would require five parking stalls, for a total of 34 required parking stalls (A). The use currently requires 28 spaces (B), and 12 off-street parking spaces are provided (C). Using the formula from Newton Zoning Ordinance (A-B+C), the petitioner is required to provide 18 parking stalls for the existing capacity and the proposed increase. Since there are only 12 parking stalls on-site, he is seeking a waiver for six stalls.

The pavement in the parking facility is in serviceable condition, but may need to be replaced or repaired in the future. In the event that the petitioner should undertake the resurfacing of the parking lot, parking spaces should be demarcated as they presently exist.

D. Landscaping

The site is essentially devoid of landscaping, as most of it is covered with buildings and bituminous pavement. Under Board Order #215-08, the petitioner was required to install and maintain window boxes with seasonal plantings. The

Planning Department confirms that the window boxes are being maintained as required. In consolidating the prior board order with the current board order, a condition should be included requiring the continued maintenance of these window boxes. The petitioner was required to maintain access to the river walk along the Charles River as an amenity to the clients and has done so.

IV. COMPREHENSIVE PLAN

Although there are no explicit references to adult day care uses in the *Newton Comprehensive Plan*, the *Plan* does encourage uses which minimize the car dependency of City residents. The proposed expansion of this facility is accessed almost exclusively by carpooling and bus/van service, limiting the need for single-occupant vehicles.

Also, the expansion of the existing use will provide a service that many local elderly residents have come to rely upon.

V. TECHNICAL REVIEW

A. Technical Considerations

The Zoning Review Memorandum ("ATTACHMENT C") provides an analysis with respect to zoning requirements. In 2008, 16 parking stalls were waived for an expansion of the use through Board Order #215-08. The current proposal is to add 15 additional students and three employees. In order to do this, the petitioner must amend this special permit to allow for an additional waiver of six parking spaces for a total waiver of 22 spaces.

B. Engineering Review

Since there are no changes proposed to the site, Engineering Department review is not required.

C. Fire Department Review

Since no changes are proposed to the site or the interior of the building, no Fire Department review is required. The petitioner is required to comply with all state licensing and safety requirements.

VI. ZONING RELIEFS SOUGHT

Based on the completed Zoning Review Memorandum ("ATTACHMENT C"), the petitioners are seeking the following reliefs:

- Section 30-19 (d) for relief from the number of parking stalls required

- Section 30-19(m) to allow exceptions to the provisions of the parking requirements
- 30-23 for site plan approval
- 30-24 for issuance of a special permit
- Amend Special Permit #215-08

VII. PETITIONERS' RESPONSIBILITIES

The petition is complete at this time.

**ATTACHMENTS:**

**ATTACHMENT A: VICINITY ZONING MAP**

**ATTACHMENT B: VICINITY LAND USE MAP**

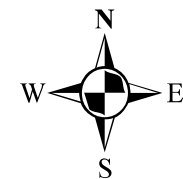
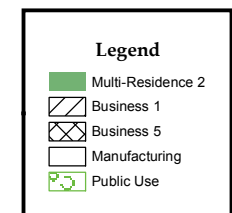
**ATTACHMENT C: ZONING REVIEW MEMO**

**ATTACHMENT D: BOARD ORDER #215-08**

**ATTACHMENT E: DRAFT BOARD ORDER 215-08(2)**

# 149A California St Vicinity Zoning

*City of Newton,  
Massachusetts*



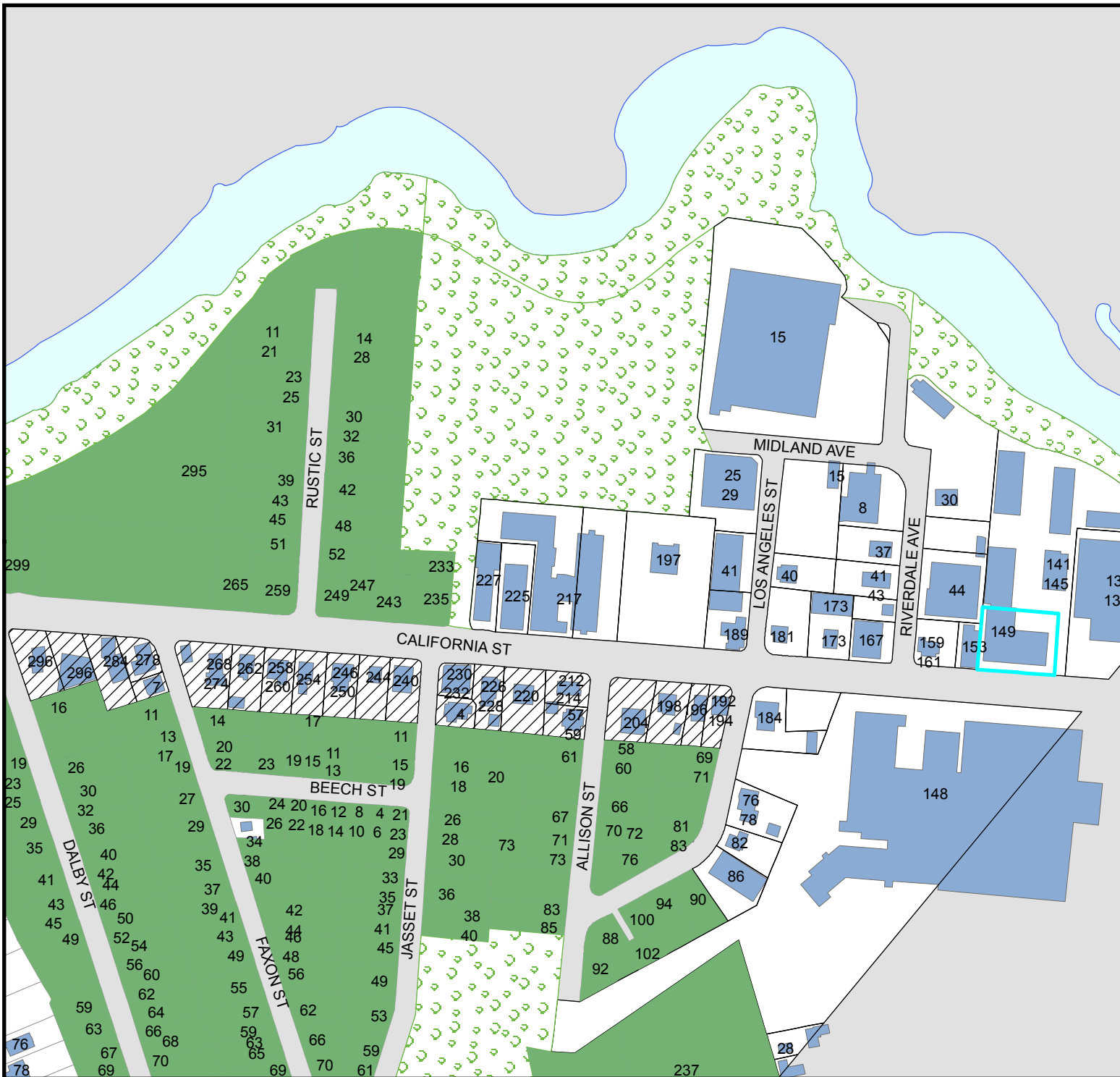
The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

CITY OF NEWTON, MASSACHUSETTS  
Mayor - Setti D. Warren  
GIS Administrator - Douglas Greenfield

0 125 250 Feet

MAP DATE: June 09, 2011








ATTACHMENT A

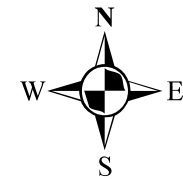


# 149A California St Vicinity Land Use

*City of Newton,  
Massachusetts*

## Legend

-  Single Family Residential
-  Multifamily Residential
-  Commercial
-  Industrial
-  Mixed Use
-  Open Space
-  Nonprofit Organizations



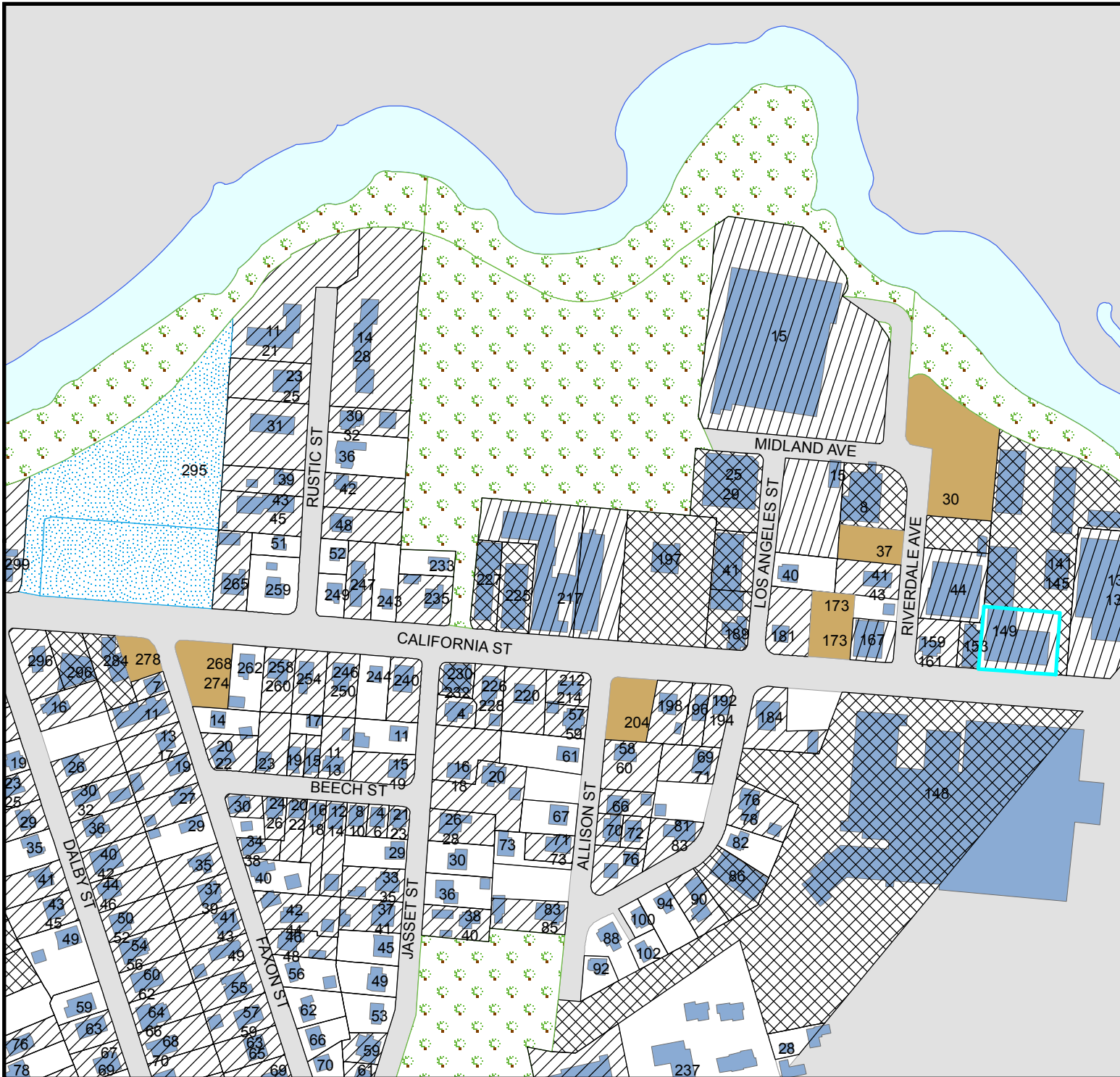
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CITY OF NEWTON, MASSACHUSETTS  
Mayor - Setti D. Warren  
GIS Administrator - Douglas Greenfield

0 125 250  
Feet

MAP DATE: June 09, 2011

ATTACHMENT B







Setti D. Warren  
Mayor

**City of Newton, Massachusetts**  
Department of Planning and Development  
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**ATTACHMENT C**

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Candace Havens  
Director

## ZONING REVIEW MEMORANDUM

Date: April 28, 2011

To: John Lojek, Commissioner of Inspectional Services

Fr: Seth Zeren, Chief Zoning Code Official  
Eve Tapper, Chief Planner for Current Planning

ET

Cc: G. Michael Peirce, attorney representing applicant  
Candace Havens, Director of Planning and Development  
Ouida Young, Associate City Solicitor

**RE: Request to amend existing special permit and waive six required parking stalls**

Applicant: Max Mazaev	
Site: 149A California Street	SBL: 11001 0001A
Zoning: MAN	Lot Area: 71,755
Current use: Non-profit Educational Use	Proposed use: Non-profit Educational Use

### Background:

The subject property consists of a 71,755 square foot lot located in the Manufacturing zone currently improved with several buildings. Occupying one of the buildings is an adult day care center, Zdorovie Senior Services, which in 2005 qualified as a non-profit educational corporation and was permitted to locate on the site under the so-called "Dover rule." The applicant's proposal in 2005, to serve 42 clients with eight staff members, was approved under the Administrative Site Plan Review process prescribed in Section 30-5(a)(2) of the Newton Zoning Ordinance. As part of that review, the Commissioner of Inspectional Services agreed to permit the operation with only 12 on-site parking spaces. The Commissioner also approved Dover-waivers for certain dimensional standards related to the parking facility.

In 2008, the organization applied to expand its operation to serve 72 clients and add four additional staff members (for a total of 12 employees). In order to do so, the Commissioner of Inspectional Services ruled that the applicant had to obtain a special permit from the Board of Aldermen to waive additional required on-site parking spaces. Board Order #215-08, approved on September 2, 2008, waived 16 required on-site parking spaces for the center to expand its services.

The applicant now proposes to increase their allowed client count by 15 to a total of 87, with a concurrent increase in staffing of three employees (to a total of 15 staff) to meet state requirements.

The following review is based on plans and materials submitted to date as noted below.

- Prior Board Order #215-08
- Administrative site plan review, signed by Commissioner Lojek, dated 10/17/05
- Architectural plans, signed and stamped by Alexander J. Knox, architect, dated 3/6/08
- Site plan, signed and stamped by James J. Abely, surveyor, dated 1/8/08

#### ADMINISTRATIVE DETERMINATIONS:

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1. The proposed use is a non-profit educational institution. The applicant proposes to increase the number of students by 15, for a total of 87, and to add three additional employees, for a total of 15. Section 30-19(d)(13) requires one stall per three students and one stall per three employees. The property provides twelve existing stalls on site. A previous Special Permit (B.O. #215-08) in 2008 allowed an increase in intensity to 72 students and 12 employees, by waiving 16 required parking spaces. The applicant requires an additional waiver of six required parking stalls (see the table below for calculations). The applicant must obtain an amendment to their prior Special Permit (B.O. #215-08) from the Board of Aldermen increasing the total parking waiver to 22 stalls.

Proposed	Parking Formula	Required Parking
87 students	1 stall/3 students	29
15 employees	1 stall/3 employees	5
Total		34 (A)
Existing	Parking Formula	Parking Credits
Number of stalls required by existing use		28 (B)
Off-street parking spaces		12 (C)
Total Spaces Required:*		18
Off-street parking provided		12
<b>Additional Parking Waiver Required</b>		<b>6</b>

\*Calculation per §30-19(c)(2): A (34) – B (28) + C(12) = Required number of parking stalls (18)

2. See "Zoning Relief Summary" below:

Zoning Relief Required		
<i>Ordinance</i>	<i>Parking</i>	<i>Action Required</i>
	Amend prior Special Permit to waive six additional required parking stalls	Amend B.O. #215-08

CITY OF NEWTON  
IN BOARD OF ALDERMEN

September 2, 2008

ORDERED:

That the Board, finding that the public convenience and welfare will be substantially served by its action and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, the following special permit/site plan approval for a nonprofit senior services center for up to 72 clients and 12 staff is hereby granted, in accordance with the recommendation of the Land Use Committee and the following reasons given by the Committee therefore, through its Chairman, Alderman George E. Mansfield:

1. The use of this site for a nonprofit senior services center is appropriate for the site in a Manufacturing Zone District, is compatible with other uses currently on the site, and will have no adverse impacts on abutters and neighboring properties.
2. The proposed waiver of 16 on-site parking spaces is appropriate because few, if any, of the clients drive.
3. The petitioner will maintain access to the nearby riverwalk alongside the Charles so clients of this center can enjoy this attractive outdoor amenity.
4. The adaptive reuse of the building is consistent with the *Newton Comprehensive Plan's* goal of making the best use of our existing resources and maintaining vitality in our commercial centers.
5. The busing of clients to and from the site are in keeping with the objectives of the *Newton Comprehensive Plan's* goal of reducing dependence upon single-occupant vehicles for the betterment of the environment.

PETITION NUMBER: #215-08

PETITIONER: Max Mazaev

LOCATION: 149A California Street, Section 11, Block 1, Lot 1A  
containing approximately 71,755 square feet of land

OWNER: Victor A. Niccolazzo Jr., TR

ADDRESS OF OWNER: Bigelow Realty Trust, 50 Tower Road, Newton, MA 02464

TO BE USED FOR: Nonprofit Adult Daycare Center for up to 72 students and 12 staff

CONSTRUCTION: No exterior changes proposed

EXPLANATORY NOTE: §30-19(m) to allow for the exceptions to the parking requirements including §39-19(d)(13) for a waiver of 16 required parking stalls; §30-23 for Site Plan Approval; and §30-24(d) for approval of a Special Permit

ZONING: Single Residence 2 District.

Approved, subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this special permit/site plan approval shall be located and constructed consistent with the following plans:
  - Plan titled “Site Plan, Newton, Massachusetts, showing existing conditions at #149A California Street” dated January 9, 2008; prepared by VTP Associates, Inc., Land Surveyors – Civil Engineers, 132 Adams St., Newton, MA 02458; stamped and signed by James J. Abely, Land Surveyor.
  - Plan titled “Site Plan, Newton, Massachusetts, showing Area Map, #149A California Street”, dated January 8, 2008, prepared by VTP Associates, Inc., Land Surveyors – Civil Engineers, 132 Adams St., Newton, MA 02458, stamped and signed by Joseph R. Porter, Land Surveyor.
  - Floor Plan titled “Zdorovie Senior Services (not for profit),” 149A California St., Newton, MA,” dated March 6, 2008, prepared by Collaborative Design Architects, 78 Walnut Street, Needham, MA. 02492; stamped and signed by Alex J. Knox, Architect
2. There shall be no more than 72 clients and 12 staff on-site at a given time.
3. The petitioner shall install and maintain window boxes with seasonal plantings or arrangements and at least one in-ground planter filled with all-season planting materials. Such plantings shall be maintained in good condition and any plant material that becomes distressed, diseased or dies shall be replaced with similar material.
4. Signage and vehicular direction markings in the parking areas shall be maintained in order to facilitate vehicular traffic flow throughout the site to the approval of the Commissioner of Inspectional Services and the City Traffic Engineer.

5. Employees shall be encouraged to use public transportation to the site.
6. Final approval for occupancy of the expanded use within this building shall not be granted until the petitioner has:
  - a. recorded a certified copy of this Board Order for a Special Permit/Site Plan approval with the Registry of Deeds for the Southern District of Middlesex County.
  - b. filed a certified copy of such recorded notices with the City Clerk, the Inspectional Services Department, and the Department of Planning and Development.
  - c. obtained approval from the Director of the Department of Planning and Development for the location and plantings within window boxes and planter as proposed.
7. Notwithstanding the provisions of Section #6.c. above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy of all or portions of the buildings prior to installation of final landscaping provided that the Petitioner shall first have filed with the Director of Planning and Development a bond, letter of credit, cash or other security in the form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the aforementioned remaining landscaping to secure installation of such landscaping.

CITY OF NEWTON  
IN BOARD OF ALDERMEN  
June 14, 2011

ORDERED:

That the Board, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following Petition #215-08(2) to amend Special Permit #215-08, granted on 9/2/08, to waive 16 on-site parking spaces for a non-profit adult daycare 149 A CALIFORNIA STREET, Ward 1, NONANTUM, which now seeks to increase the number of clients and staff, requiring a waiver of six additional required parking spaces on land known as SBL 11, 1, 1A, containing approximately 71,755 sq. ft. of land in a district zoned MANUFACTURING. Ref: Sec 30-24, 30-23, 30-19(d), and 30-19(m) of the City of Newton Rev Zoning Ord, 2007, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman Alderman Ted Hess-Mahan:

1. The Board finds that literal compliance with parking requirements is impracticable due to the nature of the use for the following reasons:
  - a. The proposed waiver of six on-site parking spaces is appropriate because few, if any, of the clients drive.
  - b. A majority of the petitioner's employees do not drive single-occupant vehicles to the site.
  - c. The site is located in close proximity to MBTA bus service and the petitioner is willing to provide incentives to encourage current employees and new hires to use public transportation.
  - d. The petitioner continues to operate a non-profit service to members of the community, while having no negative impact on the neighborhood.
  - e. The busing of clients to and from the site is in keeping with the objectives of the *Newton Comprehensive Plan's* goal of reducing the dependence on single-occupant vehicles.

PETITION NUMBER: #215-08(2)

PETITIONER: Max Mazaev and Victor A. Nicolazzo

LOCATION: 149A California St, Section 11, Block 1, Lot 1A containing approximately 71,755 sq. ft. of land

OWNER: Victor and Catherine Nicolazzo

ADDRESS OF OWNER: 50 Tower Road, Newton Upper Falls, MA

TO BE USED FOR: Non-profit adult daycare

CONSTRUCTION: No changes are proposed

EXPLANATORY NOTES: Section 30-19(d) and 30-19(m) to waive the required number of parking stalls for a non-profit educational institution and amendments to Board Order #215-08.

ZONING: Manufacturing

Approved subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this special permit/site plan approval shall be located and constructed consistent with:
  - "Site Plan Showing Existing Conditions at 149A California Street in Newton, MA," dated January 9, 2008, signed and stamped by James J. Abely, Professional Land Surveyor.
2. The center shall have no more than 87 students and 15 employees.
3. The special permit is for the petitioner and shall not be transferrable to any other person or use.
4. The petitioner shall maintain the planter boxes installed on the property in good condition with all-season plant material and replace any diseased or dead plant material with similar.
5. The petitioner shall maintain all signage and directional markings, as well as the striped parking stalls as shown on the plan referenced in Condition #1.
6. The petitioner shall encourage employees to take public transportation to the site.
7. In the event that the parking demand routinely exceeds what can be accommodated on site, the petitioner shall submit a parking management plan for review and approval by



the Commissioner of Inspectional Services, the Engineering Division of the Department of Public Works, and the Planning Department.